

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929**

**WP(C).No. 7896 of 2007(M)**  
-----

**PETITIONER:**  
-----

**PRADEEP, AGED 33, S/O. LATE V.V. CHATHU  
NAIR, RESIDING AT KAUUR P.O KAYYUR, CHERUVATHUR  
(VIA), KAYYUR VILLAGE, HOSDURG TALUK.**

**BY ADV. SRI.T.K.VIPINDAS**

**RESPONDENTS:**  
-----

- 1. THE SPECIAL TAHSILDAR (LA), KASARGOD.**
- 2. SHYAMALA, W/O. GOPALAKRISHNAN, PUTHIYA  
KANDAM, CHAYOTH**
- 3. RANJITH S/O. GOPALAKRISHNAN, PUTHIYA  
KANDAM, CHAYOTH**
- 4. RATHEESAN, S/O. GOPALAKRISHNAN,  
PUTHIYA KANDAM, CHAYOTH.**
- 5. SINDHU, D/O. GOPALAKRISHNAN, PUTHIYA  
KANDAM, CHAYOTH.**

**BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**Petitioner's Exhibits**

**Ext.P1: The true copy of the order dated 17-1-2007 in I.A. 734/2006 in L.A.R. 79/2004 of Sub-court , Hosdurg**

**Ext.P2: The true copy of the I.A. 100/2007 in I.A. 734/2006 in L.A.R. 79/2004 dated 20-1-2007**

**Ext.P3: The true copy of the order dated 20-1-2007 in I.A. 100/2007. I.A. 734/2006 in L.A.R. 79/2004 of Sub-Court Hosdurg**

**Ext.P4: The true copy of the order dated 20-1-2007 in I.A. 735/2006 in L.A.R. 79/2004 of Sub-Court, Hosdurg**

**//True copy//**

**es**

**K.PADMANABHAN NAIR, J**

-----  
**W.P.(C) 7896 of 2007**  
-----

**Dated this the 9<sup>th</sup> day of July, 2007**

**JUDGMENT**

The property to which the petitioner actually having right which was acquired by the government for a public purpose. Since there is a dispute regarding the entitlement to get compensation, the matter was referred to the Subordinate Judge's Court for considering apportionment. The case was posted for trial in the special list and numbered as L.A.R. 79/2004. When the case was posted for the last six times the petitioners and their counsel were absent. So the reference was disposed on 5-6-2006. Subsequently the petitioners filed two I.A.s.( I.A. 734 of 2006 and 735 of 2006) I.A. 734 was filed for condonation of delay of 22 days infiling a petition to set aside the order declaring petitioners as ex-parte and restore the L.A.R. back to file and I.A 735 /2006 to set aside the ex-parte order. The learned subordinate judge allowed the petition to condone the delay on condition that the petitioner shall deposit the cost of Rs. 1,350/- within three days. The order passed on 17-1-2007 with a direction to the petitioner to deposit the amount on or before 20-1-2007, Though the amount was not deposited before that date, petitioner filed an application seeking one week time that application was also dismissed.

2. The petitioners filed I.A 100/2007 in I.A. 734/2007 for enlarging the time fixed for deposit by one week. By order dated 17-1-2007 that application was dismissed on 20-1-2007 and the petition for restoration was also dismissed. Challenging those orders this writ petition

is filed.

3. After hearing the counsel for the petitioner as well as the Government Pleader I am of the view that the view taken by the learned Subordinate Judge is too rigid. The order was passed on 17-1-2007 and the party was directed to deposit the amount on or before 20-1-2007 and also that amount has to be deposited before 3 p.m. on 20-12-2007. Moreover the order could have been pronounced only after 11 a.m. on 17-1-2007. So the Court below should have at least granted a minimum required time for the lawyer to contact his client and informing the quantum of amount. and ask the client to deposit the amount of Rs. 1,350/- So the order passed by the court below dismissing I.A. 100/2007 in 734/2007 is unjustifiable and illegal and liable to be set aside.

4. In the result the writ petition is allowed in part. The time fixed by the court below for deposit of the cost is enlarged within two weeks from the date of receipt of the copy of this judgment. In case the petitioner pays or deposits the cost within two weeks the order passed by the court below in I.A 100/2007 in 734/2006 and I.A. 735/2006 are dismissed and also I.A. 734/2006 will stand dismissed and L.A.R. 79/2007 will stand restored to file. If the petitioner has not complied with the orders passed by this Court the order passed by the court below will stand confirmed.

**K.PADMANABHAN NAIR, JUDGE**

es